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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 NOLAN JORDAN,) Case No.: 1:20-cv-01658-DAD-SAB (PC)
12 Plaintiff,)
13 v.) ORDER REGARDING PLAINTIFF'S REQUEST
14 ARCEE, et al.,) FOR CLARIFICATION REGARDING
15 Defendants.) EXHAUSTION-MOTION DEADLINE
16) (ECF No. 39)
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18 Plaintiff Nolan Jordan is proceeding *pro se* and *in forma pauperis* in this civil rights action
19 pursuant to 42 U.S.C. § 1983.

20 On October 12, 2021, the Court issued the discovery and scheduling order.

21 On January 12, 2022, Defendant filed an exhaustion related motion for summary judgment.
22 (ECF No. 38.)

23 On January 14, 2022, Plaintiff filed a request for clarification regarding the exhaustion motion
24 deadline. (ECF No. 39.) Plaintiff submits that he is not sure if he is required to comply with the
25 exhaustion-related deadline or if he is to oppose any action taken by Defendant.

26 Plaintiff is advised the failure to exhaust is an affirmative defense, and Defendant bears the
27 burden of raising and proving the absence of exhaustion. Jones v. Bock, 549 U.S. 199, 216 (2007);
28 Albino v. Baca, 747 F.3d 1162, 1166 (9th Cir. 2014). Therefore, it is not necessary to plead or

1 demonstrate exhaustion of the administrative remedies. As previously stated, on December 12, 2021,
2 Defendant filed a motion for summary judgment for failure to exhaust the administrative remedies and
3 Plaintiff's opposition is due on or before **February 7, 2022**. Local Rule 230(1); Fed. R. Civ. P. 6.

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5 IT IS SO ORDERED.

6 Dated: **January 18, 2022**


UNITED STATES MAGISTRATE JUDGE